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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,618	11/24/2003	James T. Nielsen	142	4252
33109	7590	05/30/2007	EXAMINER	
CARDICA, INC. 900 SAGINAW DRIVE REDWOOD CITY, CA 94063			POUS, NATALIE R	
		ART UNIT	PAPER NUMBER	
		3731		
		MAIL DATE	DELIVERY MODE	
		05/30/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/720,618	NIELSEN ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Natalie Pous	3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 3/14/07.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 12,15,16 and 68-76 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 12,15,16,68-71 and 73-76 is/are rejected.
- 7) Claim(s) 72 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date: _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>See Continuation Sheet</u> .                                  | 6) <input type="checkbox"/> Other: _____                          |

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date  
3/14/07, 1/27/06, 4/29/05, 6/17/04, 2/6/04, 11/24/03.

## **DETAILED ACTION**

The indicated allowability of claims 14 and 16 is withdrawn in view of the newly discovered reference(s) to Stefanchik et al. (US 6187019). Rejections based on the newly cited reference(s) follow.

### ***Claim Objections***

Claim 76 is objected to because of the following informalities: line 2 of claim 76 recites: wherein said "anvil" is connected to said anvil. It is inferred that the correct wording is: wherein said —shield—is connected to said anvil. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 16 and 75-76 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 16 and 75-76 include the limitation of deforming at least a part of the shield to facilitate removing. There is no support in the specification for this limitation. The specification indicates that the shield may be composed of a flexible material, but does not disclose a method wherein the shield is deformed to facilitate removing.

Based on the specification, examiner will interpret the claim as the shield is made of a deformable material, and thus is deformed upon removal.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 12, 15, 68-71, 73 and 74 are rejected under 35 U.S.C. 102(b) as being anticipated by Stefanchik et al. (US 6187019).

Regarding Claim 12, Stefanchik teaches a surgical method for manipulating a graft vessel and a target vessel, comprising: placing an end of the graft vessel (152) against the side of the target vessel (150); inserting an anvil (82) through the side of the target vessel, wherein said anvil includes a channel defined therein (fig. 11); placing a shield (50,52) between the end of the graft vessel and the side of the target vessel, wherein said shield is connected to said anvil (fig. 11); and moving a cutter (110) to incise the target vessel, wherein said shield protects the graft vessel from the cutter, and wherein said cutter is connected to a member movable along at least portion of said channel (fig. 16).

Regarding Claim 15, Stefanchik teaches the method of claim 12, further comprising removing said shield from between the end of the graft vessel and the side of the target vessel, after said moving (fig. 21).

Regarding Claim 68, Stefanchik teaches the method of claim 12, wherein said shield is rotatable relative to said anvil (it is noted that since anvil and shield may be separated from each other, they are capable of being rotated relative to each other)

Regarding Claim 69, Stefanchik teaches the method of claim 12, wherein said shield (50,52) includes an aperture defined therein, said aperture substantially aligned with said channel (fig. 9)

Regarding Claim 70, Stefanchik teaches the method of claim 69, wherein said aperture receives at least part of said cutter during said moving (fig. 16)

Regarding Claim 71, Stefanchik teaches the method of claim 12, wherein the proximal end of the shield is connected to said anvil (it is noted that shield 50,52) is connected with anvil (82) via frame (40)) and wherein the distal end of said shield is free (fig. 9)

Regarding Claim 73, Stefanchik teaches the method of claim 12, wherein said inserting and placing are performed substantially simultaneously (it is noted that the term "substantially" is a broad term and may encompass a time period including the time period of the procedure)

Regarding Claim 74, Stefanchik teaches the method of claim 12, wherein said shield is out of contact with said cutter during said moving (fig. 16)

Claims 75 and 76 are rejected under 35 U.S.C. 102(b) as being anticipated by Blatter (US 6248117).

Regarding Claim 75, Blatter teaches a surgical method for manipulating a graft vessel and a target vessel, comprising: placing an end (97) of the graft vessel against the side of the target vessel (fig. 15d); placing a shield (560) between the end of the graft vessel and the side of the target vessel; and moving a cutter (217) to incise the target vessel (fig. 15h), wherein said shield (560) protects the graft vessel from the cutter removing said shield from between the end of the graft vessel and the side of the target vessel, after said moving (fig. 15k); and deforming at least part of said shield to facilitate removal (fig. 17a).

Regarding Claim 76, Blatter teaches the surgical method of claim 75, further comprising inserting an anvil (554) through the side of the target vessel (99); and wherein said shield (560) is connected to said anvil.

***Allowable Subject Matter***

Claim 72 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Natalie Pous whose telephone number is (571) 272-6140. The examiner can normally be reached on Monday-Friday 8:00am-5:30pm, off every 2nd Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tan-Uyen (Jackie) Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NRP  
5/17/07

*Tanuyenho*

(JACKIE) TAN-UYEN HO  
PRIMARY EXAMINER

*5/24/07*